



## City of Roanoke Invitation to Bid

Date: November 23, 2005

Bid Number: <b>05-11-07</b> <b>Truck Chassis Mounted Striping Unit</b>		Bid Opening Date: <b>January 5, 2006</b> Bid Opening Time: <b>2:00 p.m.</b>		
«Vendor_Name» «Vendor_ContactName» «Vendor_Address» «Vendor_City» «Vendor_State» «Vendor_Zip»				
Legal Name of Bidder:				
Mailing Address:				
Terms:				
Delivery:				
Telephone:		E-mail:		
Acknowledge each addendum received:	# Date	# Date	# Date	# Date
Printed name of authorized person submitting bid:				
Signature:		Date:		
Issued by:	City of Roanoke Purchasing Division Noel C. Taylor Municipal Building 215 Church Ave SW, Room 353 Roanoke, VA 24011		Vincent Greenan, Senior Buyer Phone: 540-853-5646 Fax: 540-853-1513 Email: <a href="mailto:vincent.greenan@roanokeva.gov">vincent.greenan@roanokeva.gov</a>	

THIS PUBLIC BODY DOES NOT DISCRIMINATE AGAINST FAITH BASED ORGANIZATIONS

**No bid may be withdrawn within a period of sixty (60) days after bid opening except for clerical errors, part (i) of Section 2.2-4330(A), Virginia Code, 1950, as amended.**

**The City reserves the right to cancel or reject any or all bids and to waive any informalities in any bid.**

This Invitation to Bid consists of these parts:

1. Instruction for Bidders/Specifications
2. Bid Form (Attachment A)
3. Sample Contract (Attachment B)

## **SPECIFICATIONS FOR BID**

### **SECTION 1. PURPOSE.**

The current Striping Unit which provides striping capability for the City's streets is in need of replacement due to age and usage.

### **SECTION 2. SCOPE OF SERVICES.**

The following are the services and/or items that the Successful Bidder will be required to provide to the City: Truck Chassis Mounted 300 Gallon Air Atomizing Application Striping Unit in accordance with the attached specifications.

### **SECTION 4. TERM OF CONTRACT.**

- 4.1 The term of this Contract will be for three (3) months, from **TBD**, through **TBD**, at which time it will terminate, unless sooner terminated pursuant to the terms of the Contract or by law.
- 4.2 All terms and conditions shall remain in force for the term of the contract unless modified by mutual agreement of both parties.
- 4.3 General and/or technical questions regarding the Scope of Services and/or project requirements under this Invitation to Bid may be directed to Vincent Greenan, Senior Buyer, at (540) 853-2871, or faxed to (540) 853-1513.

### **SECTION 5. PAYMENT FOR SERVICES.**

Payments to the Successful Bidder shall be made within 30 days after receipt of invoice and approval of such invoice by the City

### **SECTION 6. GENERAL INSTRUCTIONS TO BIDDERS.**

- A. Sealed Bids, to be considered, must be received by the City of Roanoke in the Purchasing Division, 215 Church Avenue, S.W., Noel C. Taylor Municipal Building, Room 353, Roanoke, Virginia 24011, on or before 2:00 p.m., local time, on January 5, 2005, at which time all bids received will be publicly opened and read. Bids received after 2:00 p.m. will not be accepted or considered. The time of receipt shall be determined by the time clock stamp in the Purchasing Office, or if it is not working, such time shall be determined by the Purchasing official who is to open the bids.

The mailed envelope shall be clearly marked on the front of that envelope, the notation and completed information as follow: "**Sealed Bid Number:** \_\_\_\_\_

**Opening Date:** \_\_\_\_\_ **and Time:** \_\_\_\_\_".

(Bidder to insert correct date) (Bidder to insert correct time)

**FAXED OR E-MAILED BIDS ARE NOT ACCEPTABLE.**

- B. If you download this ITB from the City website, and intend to submit a bid, you must notify Purchasing that you should be added to the list of entities having received a copy of the ITB and want to receive any addenda issued. The City is not responsible for any ITB obtained from any source other than the City, and may not accept bids

**from those who download this ITB and fail to notify the City of their intent to submit a bid. Contact Purchasing by phone at 540.853.2871, by fax at 540.853.1513 or by email at [vincent.greenan@roanokeva.gov](mailto:vincent.greenan@roanokeva.gov).**

- C. Payment terms and delivery date(s) must be shown on the submitted bid, if applicable.
- D. All bids are to be submitted in accordance with all terms, conditions, rules, regulations, requirements and specifications identified in and by this Invitation to Bid (ITB).
- E. Bids are to be on the Form as provided by or as otherwise specified in this ITB. If a Bid Form is provided, no changes are to be made to the Bid Form. Any changes to Bid amounts must be initialed.
- F. All bids shall be signed by a person on behalf of the responding Bidder who is appropriately authorized to do so. The printed name of that authorized person must be shown as well. Any bid submitted must be submitted in the complete legal name of the Bidder responding. No bid will be considered from any Bidder not properly licensed as may be required by law.
- G. Bids that have been appropriately opened cannot be changed, adjusted, corrected or modified in any way other than complete withdrawal. The City's procedures for withdrawal of bids (whether construction or other than construction) is that set forth in Code of Virginia §2.2-4330 which allows withdrawal of a bid due to an error such as an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid. Withdrawal must be requested within two days of the bid opening by delivering to the City original work papers, documents, and materials used in preparation of the Bid.
- H. All bids, appropriately received, will be evaluated by considering the requirements set forth in the ITB, the quality, workmanship, economy of operation, suitability for intended purpose, delivery, payment terms and price of product or service being requested in this bid.
- I. Bids are to be submitted on the brand, make and kind of product or service requested or its approved equal, to be solely determined by the City, unless otherwise specified. Should a bid be for a product or service as an equal, the name, make, model and type of that which is being bid must be clearly stated. The bid must also be accompanied by descriptive literature of the product or service bid to allow for evaluation. Failure to provide this information may result in the bid being considered non-responsive and may not be considered.
- J. If an award is made for the item(s) or services requested, a notice of award will be made which will be posted to a file in the City's Purchasing Division, Room 353, telephone no. 540-853-2871, and notification of such award will be made available for Public view in the lobby of the Noel C. Taylor Municipal Building, 215 Church Ave., S.W., Roanoke, VA. 24011. Purchase Orders, when awarded to the Successful Bidder(s), will be issued and sent to the address shown on their bid response. Upon completion of the purchase order, payment will be made only to the Successful Bidder at the address as shown on the purchase order. If the remittance address is other than the address on the bid, it must be clearly noted and explained in your bid. Purchase Order(s) will be paid only when the items and/or services have been supplied to and approved by the City.

- K. All items, identified in this Invitation to Bid, are to be quoted and provided **F.O.B. DESTINATION-INSIDE DELIVERY.**
- L. The City reserves the right to cancel or reject any or all bids, to waive any informalities in any bid and to purchase any whole or part of the items or services listed in the ITB.
- M. It is the policy of the City of Roanoke to maximize minority and women-owned business enterprises participating in all aspects of City contracting opportunities.
- N. Each Bidder is to state whether or not any of Bidder's owners, officers, employees, or agents, or their immediate family members, is currently or has been in the past year, an employee of the City of Roanoke or has any responsibility or authority with the City that might affect the procurement transaction or any claim resulting therefrom. If so, please state the complete name and address of each person and their connection to the City of Roanoke. Each Bidder is advised that the Ethics in Public Contracting and Conflict of Interests Act of the Virginia Code, as set forth in Section 5 of this ITB, apply to this ITB.
- O. **The attention of each Bidder is directed to VA Code Sections 54.1-1100 et seq. which requires certain licenses for contractors, tradesmen and others. Each Bidder is required to determine which license, if any, it is required to have under such sections. Each Bidder shall so state on the Bid Form or in its response, if no Bid Form is provided, whether it has a VA license under such sections and, if so, the type of license and/or license number. Failure to include this information may result in the bid being rejected as nonresponsive.**
- P. **Bid Submittals shall include:**
1. **Page 1, Invitation to Bid Coversheet**
  2. **Page 9, The Bid Form (Unit Price shall include all labor, material, overhead and profit.)**

**Failure to do so may result in the bid being determined as nonresponsive.**

Questions or concerns may be addressed by contacting the Purchasing Division at (540) 853-2871. Reply To:

**City of Roanoke Purchasing Division  
Noel C. Taylor Municipal Building  
215 Church Avenue SW, Room 353  
Roanoke, Virginia 24011**

- Q. Ethics in Public Contracting. The provisions, requirements, and prohibitions as contained in Sections 2.2-4367 through 2.2-4377, of the Virginia Code, pertaining to bidders, offerors, contractors, and subcontractors are applicable to this ITB.
- R. Conflict of Interests Act. The provisions, requirements, and prohibitions as contained in Sections 2.2-3100, et seq., of the Virginia Code are applicable to this ITB.
- S. The procurement provisions of the Code of the City of Roanoke (1979), as amended, Sections 23.2-1, et seq., as well as the City Procurement Manual, apply to this ITB,

unless specifically modified herein. The City's Procurement Manual can be reviewed at the Purchasing office.

**T. Insurance Requirements.**

Successful Bidder, and any of its subcontractors, shall, at its own expense, obtain and maintain during the life of the resulting Contract the insurance policies and/or bonds required. Any required insurance policies and/or bonds shall be effective prior to the beginning of any work or other performance by Successful Bidder, or any of its subcontractors, under any resultant Contract/Purchase Order. The policies and coverages required are those as may be referred to in the sample contract and/or the terms and conditions attached to this ITB.

**SECTION 7. EVALUATION FOR LOWEST RESPONSIVE AND RESPONSIBLE BIDDER.**

To determine the lowest responsive and responsible bidder with respect to this Bid, the following factors, among such others as will protect and preserve the interest of the City may be considered:

- A. Total extended bid price as set forth on the Bid Form.
- B. The specified terms and discounts of the Bid;
- C. The ability, capacity and skill of the Bidder to perform the contract or provide the service required;
- D. Whether the bidder can perform the Contract or perform the service promptly, or within the time specified, without delay or interference;
- E. The character, integrity, reputation, judgment, experience and efficiency of the Bidder;
- F. The quality of performance of previous contracts or services;
- G. The previous and existing compliance by the Bidder with laws and ordinances relating to the Contract, purchase or service;
- H. The equipment and facilities available to the Bidder to perform the Contract or provide the service, and/or items.
- I. The sufficiency of the financial resources and ability of the bidder to perform the Contract or provide the service, and/or items.
- J. The quality, availability and adaptability of the supplies, materials, equipment or services to the particular use required;
- K. The ability of the Bidder to provide future maintenance, parts and service for the use of the subject of the purchase or Contract;
- L. The conditions, if any, of the bid;
- M. Bids shall be evaluated based on the requirements set forth in this Invitation to Bid, and other criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, suitability for a particular purpose and life cycle cost. The City, in its sole discretion, may elect to waive an informality in any Bid.

**SECTION 8. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED.**

The following applies to the Successful Bidder:

- 1. During the performance of the contract, the Successful Bidder agrees as follows:
  - a. The Successful Bidder will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Successful Bidder agrees to post in conspicuous

- places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The Successful Bidder, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
  - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
2. The Successful Bidder will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over ten thousand dollars (\$10,000.00), so that the provisions will be binding upon each subcontractor or vendor.

## **SECTION 9. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR.**

All public bodies shall include in every contract over ten thousand dollars (\$10,000.00) the following provisions:

The following applies to the Successful Bidder:

During the performance of the contract, the Successful Bidder agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Successful Bidder's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Successful Bidder that the Successful Bidder maintains a drug free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over ten thousands dollars (\$10,000.00), so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, a drug free workplace means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

## **SECTION 10. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE.**

Successful Bidder, and any of its subcontractors, shall, at its sole expense, obtain and maintain during the life of the resulting Contract the insurance policies and/or bonds required. Any required insurance policies and/or bonds shall be effective prior to the beginning of any work or other performance by successful Bidder, or any of its subcontractors, under any resultant Contract. The policies and coverages required are those as may be referred to in the sample contract and/or the terms and conditions attached to this ITB, but shall include workers' compensation coverage regardless of the number of employees.

## **SECTION 11. NEGOTIATIONS WITH LOWEST RESPONSIVE AND RESPONSIBLE BIDDER.**

If the bid by the lowest responsive and responsible bidder exceeds available funds, the City reserves the right to negotiate with the apparent low bidder pursuant to §2.2-4318 Code of Virginia. The conditions and procedures under which such negotiation may be undertaken are that the appropriate City officials shall determine that the lowest responsive and responsible bid exceeds available funds and notify such bidder in writing of its desire to negotiate. Thereafter, negotiations with the apparent low bidder may be held to obtain a contract within available funds involving discussions of reduction

of quantity, quality, or other cost saving mechanisms. Any such negotiated contract shall be subject to final approval of the City, in the sole discretion of the City.

## **SECTION 12. BID AWARD.**

If an award of a contract is made, it will be made to the lowest responsive and responsible Bidder and notice of the award or the announcement of the decision to award will be made by posting a notice of such award or announcement in the foyer area of the 2<sup>nd</sup> Floor of the Noel C. Taylor Municipal Building at 215 Church Avenue, S.W., Roanoke, Virginia 24011. The City reserves the right to award to multiple Bidders.

## **SECTION 13. FAITH BASED ORGANIZATIONS.**

Pursuant to Virginia Code Section 2.2-4343.1, be advised that the City does not discriminate against faith-based organizations.

## **SECTION 14. HOLD HARMLESS AND INDEMNITY.**

Successful Bidder shall indemnify and hold harmless the City and its officers, agents, and employees against any and all liability, losses, damages, claims, causes of action, suits of any nature, costs, and expenses, including reasonable attorney's fees, resulting from or arising out of Successful Bidder's or its employees, agents, or subcontractors actions, activities, or omissions, negligent or otherwise, on or near City's property or arising in any way out of or resulting from any of the work or items to be provided under the Contract, and this includes, without limitation, any fines or penalties, violations of federal, state, or local laws or regulations, personal injury, wrongful death, or property damage claims or suits. Successful Bidder agrees to and shall protect, indemnify, and hold harmless all the parties referred to above from any and all demands for fees, claims, suits, actions, causes of action, settlement or judgments based on the alleged or actual infringement or violation of any copyright, trademark, patent, invention, article, arrangement, or other apparatus that may be used in the performance of the Contract.

## **SECTION 15. PROTESTS.**

Any Bidder who wishes to protest or object to any award made or other decisions Pursuant to this ITB may do so only in accordance with the provisions of Sections 2.2-4357, 4358, 4359, 4360, 4363, and 4364 of the Code of Virginia, and only if such is provided for in such Code section.

## **SECTION 16. INFORMATION ON CONTRACT/PURCHASE ORDER TO BE AWARDED.**

The Terms and Conditions marked as Attachment B to ITB No. 05-07-04 contains Terms and Conditions that the City plans to include in any contract/purchase order that may be awarded, but such Terms and Conditions may be changed, added to, deleted, or modified as may be agreed to between the City and the Successful Bidder. However, if a Bidder has any objections to any of the Terms or Conditions set forth in the Sample or any changes or additions thereto that the Bidder wants to discuss before submitting a bid, the Bidder should set forth such objections, changes, or additions in written correspondence to the Purchasing Division at least five (5) days before the bid opening date for this ITB. Otherwise, submission of a bid by a Bidder will obligate such Bidder, if it is the Successful Bidder, to enter into a contract/purchase order containing the same or substantially similar Terms and Conditions as contained in such Attachment, and to comply with such Terms and Conditions. Also, such Terms and Conditions, together with the requirements of this ITB, shall be

deemed to be a part of any resultant Contract/Purchase Order that may be issued by the City to the Successful Bidder.

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**ATTACHMENT A**

**To**

**ITB #05-11-07**

**BID FORM**

<b><u>ITEM</u></b>	<b><u>QUANTITY</u></b>	<b><u>PRICE</u></b>
Truck Chassis Mounted 300 Gallon Air Atomizing Application Striping Unit	1 Each	\$ _____

Bids containing any conditions, omissions, unexplained erasures, alterations or items not called for in the bid, or irregularities of any kind, may be rejected by the City as being nonresponsive. No changes are to be made to the Bid Form. Any changes to a Bid Amount must be initialed by the person signing the Bid Form.

The attention of each Bidder is directed to VA Code sections 54.1-1100, et seq. which requires certain licenses for contractors, tradesmen, and others. Each Bidder is required to determine which license, if any, it is required to have under such sections. Complete the following:

Bidder \_\_\_\_ does have \_\_\_\_ does not have a Virginia Contractor's License. (Check appropriate block)

If Bidder has a Virginia Contractor's License, circle the class Bidder has and list the number. Licensed "Class A", "Class B", or "Class C" Virginia Contractor Number \_\_\_\_\_

If Bidder has another type of Virginia License, please list the type and number:

Type of license \_\_\_\_\_ and number: \_\_\_\_\_.

Bidder is a \_\_ resident or \_\_ nonresident of Virginia. (Check appropriate blank. See VA Code sections 54.1-1100, et seq.

The undersigned hereby agrees, if this bid is accepted by the City, to provide the services and/or items in accordance with this Invitation to Bid and to execute a contract for such services and/or items.

\_\_\_\_\_  
Legal Name of Bidder

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print or Type Name and Title

## **SAMPLE CONTRACT**

### **ATTACHMENT B**

**REFERENCE ITB #05-11-07**

**THIS AGREEMENT** ("Agreement") is made and entered into the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the **CITY OF ROANOKE** ("City"), and \_\_\_\_\_ ("Contractor").

For and in consideration of the mutual promises set forth in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

#### **SECTION 1. TERM:**

The term of this Agreement shall be for three (3) months from \_\_\_\_\_ until \_\_\_\_\_, subject to the termination rights of the parties as set forth in this Agreement.

#### **SECTION 2. TERMINATION:**

The City by seven days written notice may terminate this Agreement, with or without cause, in whole or in part at any time. Upon receipt of such notice, Contractor shall immediately discontinue all services affected (unless the notice directs otherwise), and deliver to the City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by Contractor in performing this Agreement whether completed or in process.

- A. If the termination is due to the failure of Contractor to fulfill any of its Agreement obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, Contractor shall be liable to the City for any damages allowed by law, and upon demand of the City shall promptly pay the same to the City.
- B. Should the Agreement be terminated not due in any way to the fault of Contractor, Contractor shall only be entitled to compensation for services actually performed prior to notice of termination and approved by the City and any applicable federal or state approving agency.
- C. The rights and remedies of the City provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement and the City may pursue any and all such rights and remedies against Contractor as it deems appropriate.

#### **SECTION 3. SCOPE OF WORK:**

Contractor shall provide to the City a Paint Striping Truck in accordance with Attachment A, "Technical Specifications for Truck Chassis Mounted 300 Gallon Air Atomizing Application Striping Unit".

#### **SECTION 4. LUMP SUM COMPENSATION:**

The City agrees to pay Contractor for Contractor's complete and satisfactory performance of the Work, in the manner and at the time set out in this Agreement, the amount of \$ \_\_\_\_\_. The City retains the right of setoff as to any amounts of money Contractor may owe the City.

## **SECTION 5. PAYMENT SCHEDULE FOR SERVICES:**

Payment will be made within thirty (30) days after submittal and approval of a proper invoice. Said invoice may be submitted after receipt and acceptance of the Striping Truck by the City.

## **SECTION 6. INSURANCE:**

- A. Requirement of Insurance. Contractor shall, at its sole expense, obtain and maintain during the life of this Agreement the insurance policies and bonds required by this section. Any required insurance policies and bonds shall be effective prior to the beginning of any work or other performance by Contractor under this Agreement. The following policies and coverages are required:
- B. Commercial General Liability. Commercial general liability insurance shall insure against all claims, loss, cost, damage, expense or liability from loss of life or damage or injury to persons or property arising out of the Contractor's performance under this Agreement. The minimum limits of liability for this coverage shall be \$1,000,000 combined single limit for any one occurrence.
- C. Workers' Compensation. Workers' compensation insurance covering Contractor's statutory obligation under the laws of the Commonwealth of Virginia and employer's liability insurance shall be maintained for all its employees engaged in work under this Agreement. Minimum limits of liability for employer's liability shall be one hundred thousand dollars and no cents (\$100,000.00) bodily injury by accident each occurrence; five hundred thousand dollars and no cents (\$500,000.00) bodily injury by disease (policy limit); and one hundred thousand dollars and no cents (\$100,000.00) bodily injury by disease (each employee). With respect to workers' compensation coverage, the Contractor's insurance company shall waive rights of subrogation against the City, its officers, employees, agents, volunteers and representatives.
- D. Automobile Liability. The minimum limit of liability for automobile liability insurance shall be \$1,000,000 combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this Agreement.
- E. Umbrella Coverage. The insurance coverages and amounts set forth in subsections (B), (C), and (D) of this section may be met by an umbrella liability policy following the form of the underlying primary coverage. Should an umbrella liability insurance coverage policy be used, such coverage shall be accompanied by a certificate of endorsement stating that it applies to the specific policy numbers indicated for the insurance providing the coverages required by subsections (B), (C), and (D), and it is further agreed that such statement shall be made a part of the certificate of insurance furnished by Contractor to the City.
- F. Evidence of Insurance. All insurance shall meet the following requirements:
  - 1. Prior to execution of this Agreement, Contractor shall furnish the City a certificate or certificates of insurance showing the type, amount, effective dates and date of expiration of the policies. Certificates of insurance shall include any insurance deductibles. Such certificates shall be attached to this Agreement at the time of execution of this Agreement and shall be furnished in a timely fashion to demonstrate continuous and uninterrupted coverage of all of the required forms of insurance for the entire term of this Agreement.
  - 2. The required certificate or certificates of insurance shall include substantially the following statement: "The insurance covered by this certificate shall not be canceled or materially altered, except after thirty (30) days written notice has been received by the Risk Management Officer for the City of Roanoke."

3. The required certificate or certificates of insurance shall name the City of Roanoke, its officers, employees, agents, volunteers and representatives as additional insureds except with regard to the worker's compensation and employers' liability coverages.
4. Where waiver of subrogation is required with respect to any policy of insurance required under this section, such waiver shall be specified on the certificate of insurance.
5. Insurance coverage shall be in a form and with an insurance company approved by the City which approval shall not be unreasonably withheld. Any insurance company providing coverage under this Agreement shall be authorized to do business in the Commonwealth of Virginia.

#### **SECTION 7. INDEMNIFICATION:**

Contractor agrees to be responsible for and pay, indemnify, and hold harmless the City, its officers, agents, employees, and volunteers against any and all claims, damages, injuries, loss, costs, and expenses, including but not limited to reasonable attorneys' fees of any type or nature resulting from any claim or legal action of any nature whatsoever, whether or not reduced to a judgment or settlement, or for any liability of any nature whatsoever, that may arise against the City, its officers, agents, employees, or volunteers in connection with any of the rights and privileges granted by City to Contractor in this Agreement, including, without limitation, any patent, trademark, franchise, copyright, libel or defamation claim or suit and any claim or suit based upon Contractor's agents, servants, employees or invitees acts or omissions, whether intentional, negligent or otherwise.

#### **SECTION 8. REGULATIONS:**

Contractor shall fully comply with all local, state, and federal ordinances, laws, and regulations.

#### **SECTION 9. NONDISCRIMINATION:**

- A. During the performance of this Contract, Contractor agrees as follows:
  - i. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - ii. Contractor in all solicitations or advertisements for employees placed by or on behalf of Contractor will state that Contractor is an equal opportunity employer.
  - iii. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- B. Contractor will include the provisions of the foregoing Section A (i, ii, and iii) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

#### **SECTION 10. DRUG-FREE WORKPLACE:**

- A. During the performance of this Contract, Contractor agrees to (i) provide a drug-free workplace for Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for

violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- B. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

#### **SECTION 11. FAITH-BASED ORGANIZATIONS:**

Pursuant to §2.2-4343.1 of the Code of Virginia (1950), as amended, the City of Roanoke does not discriminate against faith-based organizations.

#### **SECTION 12. NEGOTIATION:**

This Agreement has been fully negotiated by and between the parties and shall be construed as if both parties had an equal responsibility in the drafting hereof.

#### **SECTION 13. ENTIRE AGREEMENT:**

This Agreement represents the entire integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement shall not be amended or modified except by written instrument signed by the parties.

#### **SECTION 14. SUCCESSORS AND ASSIGNS:**

Except as otherwise specifically provided herein, the terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of the parties.

#### **SECTION 15. NO WAIVER OF TERMS OF AGREEMENT:**

No failure of any party to insist upon strict observance of any provision of this Agreement, and no custom or practice of the parties at variance with the terms hereof, shall be deemed a waiver of any provision of this Agreement in any instance.

#### **SECTION 16. GOVERNING LAW:**

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

#### **SECTION 17. CONSIDERATION SUBJECT TO FUNDING:**

All funds for payments by the City under this Agreement are subject to the availability of an annual appropriation for this purpose by the City Council of the City of Roanoke. In the event of non appropriation of funds by the City Council of the City of Roanoke for the goods or services provided under this Agreement or substitutes for such goods or services which are as advanced or more advanced in their technology, the City will terminate this Agreement, without termination charge or other liability of the City, on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Agreement is spent, whichever event occurs first. If funds are not appropriated at any time for the continuance of this Agreement, cancellation will be accepted by Contractor or on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the City Council of the City of Roanoke shall not be obligated under this Contract beyond the date of termination.

## **SECTION 18. RELATIONSHIP TO OTHER PARTIES:**

It is not intended by any of the provisions of any part of this Agreement to confer a benefit upon any other person or entity not a party to this Agreement or to authorize any person or entity not a party to this Agreement to maintain a suit pursuant to the terms or provisions of this Agreement, including, without limitation, any claim or suit for personal injuries, property damage or loss of profits or expenses.

## **SECTION 19. NO THIRD PARTY BENEFICIARY:**

The provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person unless otherwise expressly provided for herein.

## **SECTION 20. FORUM SELECTION AND CHOICE OF LAW:**

By virtue of entering into this Contract, Contractor submits itself to a court of competent jurisdiction in the City of Roanoke, Virginia, and further agrees that this Contract is controlled by the laws of the Commonwealth of Virginia and that all claims, disputes, and other matters shall only be decided by such court according to the laws of the Commonwealth of Virginia.

## **SECTION 21. OWNERSHIP:**

Ownership of all data, materials, and documentation originated and prepared for the City pursuant to the [ITB OR RFP] shall belong exclusively to the City and be subject to public inspection in accordance with the Virginia Freedom of Information Act

## **SECTION 22. FORCE MAJEURE/IMPOSSIBILITY:**

- A. Notwithstanding the foregoing, if, by reason of Force Majeure, the City is unable to perform or observe any agreement, term or condition of this Agreement which would give rise to a default by the City of any obligation under this Agreement, the City shall not be deemed in default during the continuance of such inability or due to such inability.
- B. The term "Force Majeure" shall mean: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the Commonwealth or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; environmental problems; fires; hurricanes; tornados; storms; droughts; floods; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; shortages of labor, materials, supplies or transportation; any property on which work is to be done being too wet to allow work to be done on it; or any cause or event not reasonably within the control of the City.

## **SECTION 23. CAPTIONS AND HEADINGS:**

The section captions and headings are for convenience and reference purposes and shall not affect in any way the meaning or interpretation of this Agreement.

## **SECTION 24. NOTICE:**

Any notice, request, or demand given or required to be given under this Agreement shall, except as otherwise expressly provided herein, be in writing and shall be deemed duly given only if delivered personally or sent by certified mail, return receipt requested to the addresses stated below.

To the City:

City Manager  
Room 364, Noel C. Taylor Municipal Building

215 Church Avenue, S. W.  
Roanoke, Virginia 24011

To the Contractor:

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Notice shall be deemed to have been given, if delivered personally, upon delivery, and if mailed, upon the third business day after the mailing thereof.

**The remainder of page intentionally left blank**

IN WITNESS WHEREOF, the parties hereto have executed the same as of the day and year first hereinabove written:

**ATTEST:**

**CITY OF ROANOKE**

\_\_\_\_\_ By \_\_\_\_\_

**ATTEST:**

**{CONTRACTOR}**

By \_\_\_\_\_ By \_\_\_\_\_

Approved as to Form:

Appropriation and Funds Required  
For This Agreement Certified

\_\_\_\_\_

\_\_\_\_\_

Assistant City Attorney

Director of Finance

Approved as to Execution:

Acct # \_\_\_\_\_

\_\_\_\_\_

Assistant City Attorney